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ELECTRONICALLY FILED
 November 20, 2007

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Bankruptcy Case No.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

BK-S-06-10725-LBR
 BK-S-06-10726-LBR
 BK-S-06-10727-LBR
 BK-S-06-10728-LBR
 BK-S-06-10729-LBR

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

In re:
 USA SECURITIES, LLC,
 Debtor.

**REALE'S OPPOSITION TO DTDF'S
 MOTION TO ESTABLISH DISPUTED
 CLAIM RESERVE**

Affects:
 9 All Debtors
 9 USA Commercial Mortgage Company
 9 USA Capital Realty Advisors, LLC
 : USA Capital Diversified Trust Deed Fund, LLC
 9 USA Capital First Trust Deed Fund, LLC
 9 USA Securities, LLC

Date: December 5, 2007
 Time: 9:30 a.m.

COMES NOW Salvatore J. Reale ("Reale"), by and through his attorneys of record,
 GERRARD COX & LARSEN, and hereby files his opposition to the Motion to Establish
 Disputed Claim Reserve filed by USA Capital Diversified Trust Deed Fund, LLC ("DTDF")
 in this bankruptcy case.

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Reale's Opposition is made and based upon the following Memorandum of Points and Authorities, the attached Exhibits, any oral argument the Court may entertain at the time this matter is heard, and all pleadings and papers on file herein.

Dated this 20th day of November, 2007.

GERRARD COX & LARSEN

/s/ Michael J. Newman, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Based upon the fraudulent representations of DTDF's principals, Joseph Milanowski ("Milanowski") and Thomas Hantges ("Hantges"), Reale, on September 5, 2003, agreed to transfer a \$2,050,000.00 note, together with its accrued interest, to DTDF in exchange for a payment of Two Million Fifty Thousand Dollars (\$2,050,000.00). Reale, however, never received the payment. Although Reale ultimately received a deed of trust in a hotel called the Royal Hotel, and a deed of trust and a UCC security interest in a hotel called Hotel Zoso, as compensation for the principal balance and the accrued interest on the note, Reale later relinquished those interests in a settlement with DTDF, which settlement gave rise to Reale's claims asserted in his proof of claim on or about June 29, 2007.

Throughout their relationship with Reale, Milanowski, Hantges, DTDF, and a related entity, USA Commercial Mortgage Company ("USACM") have acted in bad faith, and at times fraudulently against Reale. Now, approximately two months after Reale filed his proof of claim against DTDF, DTDF seeks an order of this court establishing a reserve containing

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no money for Reale's claim (*see* DTDF's Motion to Establish Disputed Claim Reserve, at 11:2-8), and an order disallowing Reale's claim entirely (*see* DTDF's Objection to Proof of Claim of Salvatore J. Reale, at 7:2-4), even though DTDF was a party to the settlement agreement, which gave rise to Reale's claim against DTDF.

II.

STATEMENT OF AUTHORITIES.

Reale will submit his Response to DTDF's Objection to Proof of Claim of Salvatore J. Reale on or before November 27, 2007, pursuant to Local Bankruptcy Rule 3007(b), which requires Reale to file and to serve his Response on the objecting party at least 5 business days before the hearing, which is scheduled for December 5th, 2007. Reale hereby contends that until this Court determines whether and to what extent Reale's claim should be allowed, no distribution by DTDF should be permitted, as it would result in unequal treatment of the unsecured claimants of DTDF.

DTDF argues that Reale's proof of claim was not timely filed; however, as Reale's Response to DTDF's Objection to Reale's proof of claim will show, this Court should deem Reale's proof of claim timely filed pursuant to Federal Bankruptcy Rule 9006, and the United States Supreme Court's decision in *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380 (1993).

Reale's claim did not arise until approximately June 29, 2007, as a result of a settlement agreement between Reale and DTDF in adversary proceeding number 06-01256. Prior to that settlement, Reale considered himself fully repaid, and therefore previously saw no basis for a claim. Upon this Court's approval of the settlement on or about June 29, 2007, however, Reale's claim against DTDF arose, and Reale then submitted his proof of claim on September 17, 2007.

Furthermore, it is important to note that a substantial portion of Reale's claim against DTDF arose due to the fraudulent behavior of Milanowski, Hantges, DTDF, and USACM, of which Reale was not even aware until undertaking discovery in the related adversary

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1 proceedings nos. 06-01256, and 06-01251. Simply put, under the circumstances, DTDF
2 should not be permitted to claim the fruits of its fraud against Reale. In any event, no
3 distribution should be made until after the Court rules on the Objection to Reale's proof of
4 claim.

5 **III.**

6 **CONCLUSION**

7 For the foregoing reasons, Reale respectfully requests that this Court deny DTDF's
8 Motion to Establish Disputed Claim Reserve, until after it has determined whether Reale's
9 claim is allowed and in what amount.

10 DATED this 20th day of November, 2007.

11 **GERRARD COX & LARSEN**

12
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